



A Public Official's Guide to North Dakota Open Records & Open Meetings Laws

Office of Attorney General, 600 E. Boulevard Avenue, Bismarck, ND 58505
Tel: (701) 328-2210. Website: www.ag.nd.gov

As public servants, the performance of official duties is subject to public scrutiny. Like other states, North Dakota has "sunshine laws" which provide that all government records and meetings must be open to the public unless a specific statute authorizes a meeting or record to be closed. The best protection for public officials is to have a good working knowledge of the laws, and the exceptions that apply.

Public Access

All "public entities" are subject to the Open Record and Open Meetings laws, including: state agencies; political subdivisions; private organizations or non-profit organizations that are supported by public funds or are expending public funds; and contractors, if the contractor is providing services in place of a public entity rather than simply providing services to that entity.

The terms "record" and "meeting" are defined broadly. To deny public access to a record or a meeting, the public entity first has to identify the law that closes the record or the meeting. Then the entity must explain that law to the person requesting access.

- To deny access to **records**, the public entity must explain within a reasonable time the legal authority for denying the request. If asked, the entity must put the denial and explanation in writing.
- To deny access to a **meeting**, the public entity must identify the topics to be considered and the legal authority for closing a meeting **before** asking the public to leave the meeting room.

Violations

Any member of the public may ask the Attorney General to issue an advisory opinion regarding an alleged violation of the open records or meetings laws. If the Attorney General finds that there was a violation, the entity has seven days to take corrective action. Criminal prosecution also may result if the public entity or employee knowingly violated the law.

Quick Tips

- A statute may declare certain records to be **exempt** or **confidential**. If a record is exempt, a public entity may release it at its discretion. If a record is confidential, the public entity either cannot release it or must cross out the confidential information first.
- Anyone has the right to attend meetings of a public entity or access and obtain copies of the entity's records, regardless of where they live.
- A governing body can close a meeting to talk with its attorney if the discussion pertains to the attorney's advice regarding a pending or reasonably predictable lawsuit involving the public entity.
- Economic development information identifying the name, nature, and potential location of a business considering relocating or expanding within the state can be closed until the business announces its intentions.
- Public employee salary and job performance information is open, but certain personal information may be exempt or confidential.
- Confidentiality clauses in a settlement agreement involving a public entity are against public policy and are declared void by state law.
- The definition of "record" includes all recorded information, regardless of physical form (paper, e-mail, computer file, photographs, audiotape, or videotape) that has a connection with how public funds are spent or with a public entity's performance of its governmental functions.
- Public officials and employees generally should know what records under their control must be disclosed. A delay to seek legal advice is reasonable only if there is a legitimate legal or factual question on what may be disclosed. It is not reasonable to delay responding to a request until the next meeting of the governing body.

Open Meetings

“Meeting” means any gathering of a quorum of the members of a governing body of a public entity regarding public business, and includes: committees and subcommittees, informal gatherings or work sessions, and discussions where a quorum of members are participating by phone, either at the same time or in a series of individual phone conversations. If a governing body delegates any authority to two or more people, the newly formed committee is also subject to the open records and meetings laws.

- The only time a gathering of a quorum of members is not a meeting is if it is a purely social gathering—as soon as public business is discussed, it becomes a “meeting.”
- A member of the public does not have the right to speak to the governing body at an open meeting. However, other statutes may require a hearing for public comment.

Closed Meetings

Before a governing body can close a portion of its meeting, it first must convene in a properly noticed open meeting. Next, it has to announce the legal authority to close the meeting and the topics to be considered during the closed portion of the meeting. After that, unless the law requires a closed meeting, the governing body must vote on whether to close the meeting. Any executive session must be tape recorded. All substantive votes must be recorded by roll call.

Notice of Meetings

Prior written notice is required for all open meetings. The notice must include the date, time and location of the meeting and the agenda topics the governing body expects to address during the meeting. Regular meeting agendas may be altered at the time of the meeting. For special or emergency meetings, only the specific topics included in the notice may be discussed.

Meeting notices must be filed with the Secretary of State for state agencies, the City Auditor for city-level entities, and the County Auditor for all other entities. Notices must be posted in the entity's main office, if it has one, and at the location of the meeting (if the meeting is held elsewhere). Notice of special or emergency meetings must be given to the entity's official newspaper and any media representatives who have asked for notice of special or emergency meetings. Copies of meeting notices can be obtained from the appropriate office. If requested, a public entity must provide personal notice of all its meetings during a specified time to a citizen.

As a general rule, there is no mandatory advance notice period for public meetings. Notice must be posted, filed at the central location, and given to anyone who has requested it, at the same time the members of the governing body are notified of the meeting.

Open Records

Citizens have a right to open records, regardless of the reason. However, a request must reasonably identify existing records. A request for public records can be made in any manner - in person, by mail, e-mail, fax, or by phone. The entity must respond to the request within a reasonable time, either by providing the requested record or by explaining the legal authority for denying all or part of the request. Depending on the amount of records requested, a “reasonable” time could be a couple of hours or a few days, but not several days or weeks. If the entity cannot fulfill the request immediately, it should give the requester an estimate of when the record will be available.

A public entity can only deny access to information for which there is a specific statute closing that information. The remaining information must be open to the public. The entity can supervise access to an original record to prevent its alteration or destruction. If a request for records is denied, the entity must explain what specific federal or state law makes the requested record confidential or closed to the public. If asked, the entity must put the reason for the denial in writing.

- A public entity cannot ask why the records are requested, ask for identification, require a request be made in writing (or in person). The entity does not have to respond to questions about the record. It does not have to create or compile a record that does not exist.

Costs

Access to records is generally free. An entity may charge up to 25¢ per page for copies on 8½ x 11” or 8 ½ x 14” paper. For any other kind of copy (including photos, maps, computer records, etc.) the entity can charge the actual cost of making the copy, including labor, materials and equipment. Other statutes may authorize a different fee. The entity may require the requester to pay the charge before making or sending the copy. If the requester wants the records mailed, actual postage costs may be included in the charge. The first hour of locating the records is free. After the first hour, you can charge up to \$25 per hour for locating the records. You can also charge up to \$25 per hour for the time it takes to review the records and cross out exempt or confidential information from open records; however, the first hour is free.